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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

21 CR 478 (ER)

5 TREVOR MILTON,

6 Defendant.

7 -----x

New York, N.Y.

8 October 14, 2022
9 9:00 a.m.

10 Before:

11 HON. EDGARDO RAMOS,

12 District Judge

13
14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
17 Southern District of New York

18 BY: JORDAN L. ESTES

NICOLAS T. ROOS

MATTHEW D. PODOLSKY

Assistant United States Attorneys

19 MUKASEY FRENCHMAN, LLP

Attorneys for Defendant

20 BY: MARC L. MUKASEY

KENNETH A. CARUSO

21 TORREY K. YOUNG

22 CAHILL GORDON & REINDEL, LLP

Attorney for Defendant

23 BY: BRADLEY J. BONDI

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(Trial resumed; jury not present)

THE COURT: Mr. Roos, you look like you want to say something.

MR. ROOS: A small thing. Mr. Milton wasn't present for parts one, two, or three of the charge conference.

THE COURT: One more time.

MR. ROOS: Mr. Milton wasn't present for any of the charge conference, and I believe his appearance was waived for the first one, but I just want to put on the record we understand that his appearance is waived for all of the charge conferences.

THE COURT: I believe it was waived for all of the charge conferences. Is that correct?

MR. MUKASEY: That was our understanding; and, if not, he retroactively waives his right to have been there.

THE COURT: Anything else?

MR. ROOS: That's all I have got.

MR. MUKASEY: I have two issues, Judge—one related to rebuttal and one related to the jury charge.

Starting with the rebuttal, we thought it was an unfair and improper analogy to analogize Mr. Milton to not just a bank robber, but a bank robber who goes into the bank with a shotgun. And I understand very, very loosely what Mr. Podolsky was trying to say, but we think it would be proper and necessary to tell the jury that Mr. Podolsky was making an

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1 argument, not to be held against him, but certainly the analogy
2 to a bank robbery has nothing to do with this case or
3 Mr. Milton.

4 THE COURT: Why?

5 MR. MUKASEY: It was an violent image and unfair and
6 out of bounds.

7 MR. ROOS: It is not about our case. He said "let me
8 give you an analogy" before doing it and your Honor overruled
9 the objection at the time, so I don't think there is any sort
10 of curative objection that's necessary.

11 THE COURT: I don't think a curative instruction is
12 necessary. The jury will be told again during the course of
13 the instructions that anything the lawyers said during the
14 course of their summations was not evidence; it is simply
15 argument. But I guess the notion of an armed bank robbery is
16 something that is -- something that's known, and I don't think
17 it was particularly evocative of something that was untoward,
18 and it could have been any number of things. I don't think it
19 is unduly prejudicial.

20 MR. MUKASEY: Okay. Well, for the record, we are
21 going to move for a mistrial because of that. You can deny it,
22 as I am sure you will.

23 THE COURT: It is denied.

24 MR. MUKASEY: The second point, and this is, I guess,
25 obviously well within your discretion, and I guess I'm sort of

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1 interested in hearing what the government thinks, because the
2 jury is getting the case after having been here a month and
3 because it will start deliberating what's been a complicated
4 case on what is in essence a Friday, late Friday morning, we
5 thought it might be prudent to instruct the jury that they can
6 stay here, you know, as long as they want tonight, which I
7 think you did say yesterday, and that, you know, the courthouse
8 is open on Monday if they need to keep going. I just don't
9 want there to be an artificial ending point today at 2:40 or
10 today at 5:00 or something.

11 THE COURT: I will make that point, not in so many
12 words, but let them know that from this point forward, for
13 however long the deliberations take, the schedule is in their
14 hands; they can continue to stay until 2:30 or they can come
15 back earlier Monday than 9:30 to begin deliberations, etc.

16 MR. MUKASEY: Yes. I think a mention of Monday, just
17 so they know it is an option.

18 THE COURT: Absolutely.

19 MR. MUKASEY: Thank you, Judge.

20 MR. ROOS: Just one question about the jurors. I
21 noticed a few coughing, and maybe I'm just scarred by our
22 ten-day hiatus, but what is your Honor's plan with the
23 alternates?

24 THE COURT: With the alternates?

25 MR. ROOS: Yes.

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1 THE COURT: The alternates will be told—it's in the
2 instructions—that they will be released for now but they are
3 not yet done that they should continue not to read anything
4 about the case and that it's possible they may be called in at
5 some point if one of the first 12 is unable to continue
6 deliberations.

7 MR. ROOS: Great.

8 MR. MUKASEY: Thank you, your Honor.

9 THE COURT: Okay.

10 (Continued on next page)

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1 (Jury present)

2 THE COURT: Ladies and gentlemen of the jury, good
3 morning, and thank you as always for being so prompt.

4 You all have a binder in your seats. This binder
5 contains three documents. It contains the indictment which
6 charged Mr. Milton. As I will tell you in these instructions,
7 the indictment is not evidence of any kind. It also includes
8 the instructions which I am about to read you. You don't need
9 to attempt to memorize what I tell you because you will have
10 the instructions with you as you deliberate. And the binder
11 also has a verdict form at the end, so each of you have a copy
12 of the verdict form. However, we will only need one when you
13 reach your verdict. It is just simply there for your
14 information.

15 I will be reading the instructions. It is 37 pages.
16 And if history is any guide, it will take me about an hour to
17 read through this because I need to do so deliberately so,
18 obviously, the court reporter can take everything down. If at
19 any point you need to get up and stretch, I will not take
20 offense if you do that.

21 As I indicated, you will have it with you. If you
22 want to read along, you are free to do so. If you simply want
23 to sit and listen, you can do that. Whatever makes you most
24 comfortable. Okay? Okay.

25 So let's begin. The instructions, page 1 is several

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1 pages into the binder. Let me know when you are all there. It
2 appears that you all are. Very well.

3 Members of the jury, we have almost reached that point
4 where you will begin your final function as jurors. As you all
5 appreciate, this is one of the most important duties of
6 citizenship in this country.

7 My instructions to you will be in four parts. First,
8 I will give you some introductory instructions about the role
9 of the Court and of the jury, and about the presumption of
10 innocence and the government's burden of proof. Second, I will
11 describe the charges and the law governing those charges, which
12 you will apply to the facts as you find them to be established
13 by the proof. Third, I will give you instructions concerning
14 the evaluation of evidence. And the fourth and final section
15 of these instructions will relate to your deliberations.

16 I will first describe the role of the Court and of the
17 jury.

18 It is my duty to instruct you as to the law, and it is
19 your duty to accept these instructions of law and apply them to
20 the facts as you determine them. If an attorney stated a legal
21 principle different from any that I state to you in my
22 instructions, it is my instructions you must follow. You
23 should not single out any instruction as alone stating the law,
24 but you should consider my instructions as a whole when you
25 retire to deliberate. You should not be concerned about the

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1 wisdom of any rule that I state. Regardless of any opinion you
2 may have about what the law may be or ought to be, it would be
3 a violation of your oath to base your verdict on any view of
4 the law other than that which I give you.

5 You, the members of the jury, are the sole and
6 exclusive judges of the facts. You pass on the evidence,
7 determine the credibility of witnesses, resolve such conflicts
8 as there may be in the testimony, draw whatever reasonable
9 inferences you decide to draw from the facts as you determine
10 them, and determine the weight of the evidence. In doing so,
11 remember that you took an oath to render judgment impartially
12 and fairly, without prejudice or sympathy or fear, based solely
13 on the evidence and the applicable law.

14 The fact that the prosecution is brought in the name
15 of the United States of America entitles the government to no
16 greater consideration than that given to any other party to
17 this litigation. By the same token, the government is entitled
18 to no less consideration.

19 The defendant, Trevor Milton, has pleaded not guilty
20 and has denied every charge against him. That means the
21 government has the burden of proof to prove him guilty beyond a
22 reasonable doubt. That burden of proof never shifts to
23 Mr. Milton. A defendant in a criminal case never has the
24 burden to call any witnesses or produce any evidence. Even
25 though Mr. Milton has presented evidence in his defense, it is

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1 not his burden to prove himself not guilty. It is always the
2 government's burden to prove each of the elements of the crimes
3 charged beyond a reasonable doubt.

4 In other words, Mr. Milton starts with a clean slate.
5 He is presumed innocent of all charges against him, and he must
6 be presumed innocent by you throughout your deliberations,
7 until such time, if ever, as you as a jury unanimously find
8 that the government has proven him guilty beyond a reasonable
9 doubt. The presumption of innocence alone requires you to
10 acquit Mr. Milton if the government fails to prove him guilty
11 beyond a reasonable doubt.

12 Since, in order to convict Mr. Milton of a given
13 charge, the government is required to prove that charge beyond
14 a reasonable doubt, the question then is: What is reasonable
15 doubt? The words almost define themselves. It is a doubt
16 based upon reason. It is a doubt that a reasonable person has
17 after carefully weighing all of the evidence. It is a doubt
18 that would cause a reasonable person to hesitate to act in a
19 matter of importance in his or her personal life. Proof beyond
20 a reasonable doubt must, therefore, be proof of a convincing
21 character that a reasonable person would not hesitate to rely
22 upon in making an important decision.

23 A reasonable doubt is not caprice or whim. It is not
24 speculation or suspicion. It is not an excuse to avoid the
25 performance of an unpleasant duty. The law does not require

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1 that the government prove guilt beyond all possible
2 doubt: proof beyond a reasonable doubt is sufficient to
3 convict.

4 If, after fair and impartial consideration of the
5 evidence, you have a reasonable doubt as to Mr. Milton's guilt
6 with respect to a particular charge against him, you must find
7 him not guilty of that charge. On the other hand, if after
8 fair and impartial consideration of all the evidence you are
9 satisfied beyond a reasonable doubt of Mr. Milton's guilt with
10 respect to a particular charge against him, you should find him
11 guilty of that charge.

12 Let us now turn to the specific charges in the
13 indictment. An indictment is simply an accusation. It is no
14 more than the means by which a criminal case is started. It
15 creates no presumption and it permits no inference that
16 Mr. Milton is guilty. The indictment in this case is not
17 evidence. It merely describes the charges against Mr. Milton.
18 It is a set of accusations. It may not be considered by you as
19 evidence of Mr. Milton's guilt. Only the evidence or lack of
20 evidence introduced at the trial in this case decides that
21 issue.

22 The indictment alleges that from approximately
23 November 2019 through September 2020, Mr. Milton devised a
24 scheme to defraud investors in his company, Nikola, an
25 electric- and hydrogen-powered vehicle and energy company,

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1 through false and misleading statements regarding the company's
2 product, technology, and business development. It also alleges
3 that from approximately April 2020 through March 2021,
4 Mr. Milton devised a scheme to obtain money and property by
5 means of false and fraudulent pretenses in connection with his
6 purchase of the Wasatch Creeks Ranch.

7 The indictment contains four counts, or charges. I
8 will, at times, refer to each count by the number assigned to
9 it in the indictment. You should know that there is no
10 significance to the order of these charges or the specific
11 number of counts charged. In your deliberations and in
12 reaching your verdict, you must consider each count separately
13 and you must return a separate verdict as to each count.

14 Counts One, Two, and Three relate to Mr. Milton's
15 alleged actions to defraud investors from November 2019 to
16 September 2020. Count One charges Mr. Milton with securities
17 fraud under Title 15 of the United States Code. Count Two
18 charges Mr. Milton with securities fraud under Title 18 of the
19 United States Code. Count Three charges Mr. Milton with wire
20 fraud as to those same actions from November 2019 to September
21 2020. Count Four charges Mr. Milton with wire fraud as to his
22 actions from April 2020 through March 2021 relating to his
23 purchase of the Wasatch Creeks Ranch.

24 In a few moments, I will instruct you on each of these
25 charges in more detail.

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1 You must consider each individual charge separately
2 and evaluate each on the proof or lack of proof that relates to
3 that charge. You must consider whether the government has
4 carried its burden of proof with respect to each element of
5 each count. Your verdict on any single count should not
6 control your decision on any other count. I will provide you
7 with a verdict form and you will need to report the results of
8 your deliberations on the verdict form.

9 Let us turn first to Count One of Title 15, the
10 securities fraud charge. Count One alleges that from November
11 2019 through September 2020, Mr. Milton devised a scheme to
12 defraud investors in his company, Nikola, through false and
13 misleading statements regarding the company's product,
14 technology, and business development. The law provides in
15 relevant part "it shall be unlawful for any person, directly or
16 indirectly, by the use of any means or instrumentality of
17 interstate commerce or of the mails, or of any facility of any
18 national securities exchange . . . to use or employ, in
19 connection with the purchase or sale of any security registered
20 on a national securities exchange or any security not so
21 registered, or any security-based swap agreement . . . any
22 manipulative or deceptive device or contrivance in
23 contravention of such rules and regulations as the [Securities
24 and Exchange] Commission may describe as necessary or
25 appropriate in the public interest or for the protection of

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1 investors."

2 In order to meet its burden of proof on this count,
3 the government must prove each of the following three elements
4 beyond a reasonable doubt:

5 First, that in connection with the purchase or sale of
6 securities, Mr. Milton did any one or more of the following:

7 (1) employed a device, scheme, or artifice to defraud,
8 or

9 (2) made an untrue statement of a material fact or
10 omitted to state a material fact which made what was said,
11 under the circumstances, misleading, or

12 (3) engaged in an act, practice, or course of business
13 that operated, or would operate, as a fraud or deceit upon a
14 purchaser or seller;

15 Second, that Mr. Milton acted knowingly, willfully,
16 and with an intent to defraud; and

17 Third, that in furtherance of the fraudulent conduct,
18 there occurred at least one use of any means or instruments of
19 transportation or communication in interstate commerce, or the
20 use of the mails, or the use of any facility of any national
21 securities exchange.

22 The first element that the government must prove
23 beyond a reasonable doubt is that, in connection with the
24 purchase or sale of securities, Mr. Milton did any one or more
25 of the following: employed a device, scheme, or artifice to

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1 defraud; made an untrue statement of material fact, or omitted
2 to state a material fact which made what was said, under the
3 circumstances, misleading; or engaged in an act, practice, or
4 course of business that operated, or would operate, as a fraud
5 or deceit upon a purchaser or seller of Nikola or VectoIQ
6 securities.

7 A "device, scheme, or artifice to defraud" is merely a
8 plan to accomplish a fraudulent objective. A "scheme to
9 defraud" is a pattern or course of conduct concerning a
10 material matter designed to deceive a person. "Fraud" is a
11 general term that embraces all efforts and means that
12 individuals devise to deceive and take advantage of others.

13 A statement, representation, claim, or document is
14 false if it is untrue when made and was then known to be untrue
15 by the person making it or causing it to be made. A
16 representation or statement is fraudulent if it was made with
17 the intent to deceive. The concealment of material facts in a
18 manner that makes what was said or represented deliberately
19 misleading may also constitute false or fraudulent statements
20 under the statute. The failure to disclose information may
21 also constitute a fraudulent representation if the defendant
22 was under a legal, professional, or contractual duty to make
23 such a disclosure, the defendant actually knew such disclosure
24 was required to be made, and the defendant failed to make such
25 disclosure with the intent to defraud.

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1 It is not necessary for the government to establish
2 all three types of fraudulent conduct. But to find the
3 government has proven the first element, you must be unanimous
4 as to at least one type of conduct you find to have been proven
5 beyond a reasonable doubt.

6 You cannot find that the government has proven the
7 first element of securities fraud unless you find that
8 Mr. Milton participated in fraudulent conduct that was "in
9 connection with" a purchase or sale of securities. The
10 requirement that the fraudulent conduct be "in connection with"
11 a purchase or sale of securities is satisfied so long as there
12 was some nexus or relation between the allegedly fraudulent
13 conduct and the sale or purchase of securities. Fraudulent
14 conduct may be "in connection with" the sale or purchase -- the
15 purchase or sale of securities if you find that the alleged
16 fraudulent conduct coincided with a securities transaction.
17 You need not find that Mr. Milton actually participated in any
18 specific purchase or sale of a security if you find that he
19 participated in fraudulent conduct that was "in connection
20 with" a "purchase or sale" of securities.

21 It is not necessary for you to find that Mr. Milton
22 was or would be the actual seller of the securities. It is
23 sufficient if the misrepresentation or omission of material
24 fact involved the purchase or sale of securities. By the same
25 token, the government need not prove that he personally made

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1 the misrepresentation or that he omitted the material fact. It
2 is sufficient if the government establishes that Mr. Milton
3 caused the statement to be made or the fact to be omitted.
4 With regard to the alleged misrepresentations and omissions,
5 you must determine whether the statements were true or false
6 when made and, in the case of alleged omissions, whether the
7 omissions were misleading.

8 If you find that the government has established beyond
9 a reasonable doubt that a statement was false or a statement
10 was omitted, rendering the statements that were made
11 misleading, you must next determine whether the statement or
12 omission was material under the circumstances. The word
13 "material" here refers to the nature of the false or misleading
14 statements. We use the word "material" to distinguish between
15 the kinds of statements we care about and those that are of no
16 real importance. Matters that are "material" may also include
17 fraudulent half-truths or omissions of material fact. A
18 material fact is one as to which there is a substantial
19 likelihood that a reasonable investor would have considered
20 important in making his or her investment decision in light of
21 the total mix of information publicly available. That means
22 that if you find a particular statement of fact or omission to
23 have been untruthful or misleading, before you can find that
24 statement or omission to be material, you must also find that
25 the statement or omission was one that would have mattered to a

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1 reasonable investor in making their decision.

2 In considering whether a statement or omission was
3 material, let me caution you that it is not a defense if the
4 material misrepresentation or omission would not have deceived
5 a person of ordinary intelligence. In addition, a written
6 disclaimer cannot render any misrepresentation, including any
7 oral misrepresentation, immaterial as a matter of law. Once
8 you find that the offense involved the making of material
9 misrepresentations or omissions of material facts, it does not
10 matter whether any of the victims involved were careless,
11 gullible, or even negligent, or that they might have uncovered
12 the scheme on their own had they probed more deeply, because
13 the law protects the gullible and unsophisticated as well as
14 the experienced investor.

15 Nor does it matter whether the alleged unlawful
16 conduct was or would have been successful, or whether the
17 defendant profited or would have profited as a result of the
18 alleged scheme. Success is not an element of the offense. If,
19 however, you find that the defendant expected to or did profit
20 from the alleged scheme, you may consider that in relation to
21 the element of intent, which I will discuss in a moment.

22 The second element of the Title 15 securities fraud
23 charge in Count One relates to Mr. Milton's state of mind. If
24 you find that the government has met its burden of proving the
25 first element—that is the element I just explained—the

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1 government must then prove beyond a reasonable doubt that
2 Mr. Milton engaged in the scheme knowingly, willfully, and with
3 an intent to defraud. To act knowingly means to act
4 intentionally, deliberately, and voluntarily, rather than by
5 mistake, accident, ignorance, or careless. To act willfully
6 means to act voluntarily and with a wrongful purpose.

7 Whether Mr. Milton acted knowingly, willfully, and
8 with an intent to defraud is a question of fact for you to
9 determine, like any other fact question. Direct proof of
10 knowledge and intent to deceive is not required. Knowledge and
11 criminal intent may, like any other fact, be established by
12 circumstantial evidence. What is referred to as drawing
13 inferences from circumstantial evidence is no different from
14 what people normally mean when they say, "use your common
15 sense." Science has not yet devised a manner of looking into a
16 person's mind and knowing what that person is thinking.
17 However, you have before you evidence of certain actions and
18 statements by Mr. Milton. The government contends that these
19 actions and statements show beyond a reasonable doubt
20 Mr. Milton's knowledge of the unlawful purposes of his actions.
21 On the other hand, Mr. Milton denies either that these acts and
22 statements occurred or that they show that he had such
23 knowledge, intent, and purpose.

24 It is for you to determine whether the government has
25 established beyond a reasonable doubt that Mr. Milton had such

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1 knowledge, intent, and purpose.

2 Please note that if Mr. Milton honestly believed that
3 his statements and actions were proper and not in furtherance
4 of any unlawful scheme, then such good faith would be a
5 complete defense to all of the charges here. An honest belief
6 in the truth of the representations made by a defendant is a
7 complete defense, however inaccurate the statements may turn
8 out to be. Thus, by way of example, if Mr. Milton honestly
9 believed that his statements to investors were accurate and not
10 misleading, that would be a complete defense to the charge of
11 securities fraud, even if that belief ultimately proved to be
12 inaccurate. However, the defendant does not bear the burden of
13 proving his good faith. It remains at all times the
14 government's burden to prove, beyond a reasonable doubt, that
15 the defendant acted knowingly, willfully, and with an intent to
16 defraud.

17 With respect to Count One, the Title 15 securities
18 fraud charge, the third and final element that the government
19 must prove beyond a reasonable doubt is that Mr. Milton used,
20 or caused to be used, the mails or the instrumentalities of
21 interstate commerce in furtherance of the alleged scheme to
22 defraud.

23 The parties agree that this element has been met.

24 Count Two charges Mr. Milton with securities fraud
25 under Title 18 of the United States Code. That law provides in

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1 relevant part that a person is guilty of the crime of
2 securities fraud if he "knowingly executes, or attempts to
3 execute, a scheme or artifice to defraud any person in
4 connection with any . . . security of an issuer with a class of
5 securities registered under section 12 of the Securities
6 Exchange Act of 1934; or to obtain by, means of false or
7 fraudulent presentences, representations, or promises, any
8 money or property in connection with the purchase or sale of
9 any commodity for future delivery, or any option on a commodity
10 for future delivery, or any security of an issuer with a class
11 of securities registered under section 12 of the Securities
12 Exchange Act of 1934."

13 To prove that the defendant committed this crime, the
14 government must prove each of the following elements beyond a
15 reasonable doubt:

16 First, that the defendant executed a scheme or
17 artifice either (a) to defraud a person or (b) to obtain money
18 or property by means of materially false and fraudulent
19 pretenses, representations, or promises;

20 Second, that the defendant knowingly and willfully
21 participated in the scheme or artifice; and

22 Third, that the scheme to defraud was in connection
23 with the purchase or sale of stock in a company whose
24 securities were registered under section 12 of the Securities
25 Exchange Act of 1934 or was otherwise required to file reports

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1 under that act.

2 As I instructed you earlier, a scheme or artifice to
3 defraud is merely a plan to accomplish a fraudulent objective.
4 A "scheme to defraud" is a pattern or course of conduct
5 concerning a material matter designed to deceive a person.
6 "Fraud" is a general term that embraces all efforts and means
7 that individuals devise to deceive and take advantage of
8 others.

9 I will instruct you on the meaning of "materially" or
10 a "material fact" in this context in a few moments when I
11 discuss Counts Three and Four. You should apply that
12 definition to Title 18 securities fraud in Count Two as well.

13 As I instructed you earlier, to act knowingly means to
14 act intentionally, deliberately, and voluntarily, rather than
15 by mistake, accident, ignorance, or carelessness. To act
16 willfully means to act voluntarily and with a wrongful purpose.

17 To prove specific intent to defraud, the government
18 must prove that Mr. Milton intended to deceive the alleged
19 victims and intended to harm them by depriving them of money or
20 property.

21 With respect to the third element, as I instructed you
22 with respect to Count One with respect to the third element, a
23 scheme to defraud is connected to the purchase or sale of a
24 security if you find that the alleged conduct coincided with a
25 securities transaction. It is not necessary for you to find

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1 that the defendant actually purchased or sold securities. As a
2 matter of law, the shares of Nikola and VectoIQ were securities
3 registered under section 12 of the Securities Exchange Act.

4 Counts Three and Four of the indictment charge
5 Mr. Milton with committing wire fraud, in violation of Title 18
6 of the United States Code Section 1343. The law provides that
7 "whoever, having devised or intending to devise any scheme or
8 artifice to defraud, or for obtaining money or property by
9 means of false or fraudulent pretenses, representations, or
10 promises, transmits or causes to be transmitted by means of
11 wire, radio, or television communication in interstate or
12 foreign commerce, any writings, signs, signals, pictures, or
13 sounds for the purpose of executing such scheme or artifice,
14 [shall be guilty of a federal crime]."

15 In order to prove Mr. Milton guilty of wire fraud, the
16 government must establish beyond a reasonable doubt the
17 following elements of the crime of wire fraud:

18 First, that there was a scheme or artifice to defraud
19 the victims of money or property or to obtain money or property
20 by false or fraudulent pretenses, representations, or promises;
21 second, that the defendant knowingly and willfully participated
22 in the scheme or artifice to defraud with knowledge of its
23 fraudulent nature and with specific intent to defraud; and

24 Third, that in execution of the scheme or artifice,
25 the defendant used, or caused the use of, interstate wires.

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1 As I instructed you earlier, a scheme or artifice to
2 defraud is merely a plan to accomplish a fraudulent objective.
3 A "scheme to defraud" is a pattern or course of conduct
4 concerning a material matter designed to deceive a person.
5 "Fraud" is a general term that embraces all efforts and means
6 that individuals devise to deceive and take advantage of
7 others.

8 The wire fraud statute provides that it can be
9 satisfied by the existence of a scheme or artifice to defraud
10 the victim of money or property or to obtain money or property
11 by means of false or fraudulent pretenses, representations, or
12 promises. A pretense, representation, statement, or document
13 is fraudulent if it was made falsely and with an intent to
14 deceive. A representation, statement, claim, or document may
15 also be fraudulent if it contains half-truths or if it conceals
16 material facts in a manner that makes what is said or
17 represented deliberately misleading or deceptive.

18 The deception need not be premised on spoken or
19 written words alone. The arrangement of words, or the
20 circumstances in which they are used, may convey the false and
21 deceptive appearance. If there is deception, the manner in
22 which it is accomplished does not matter.

23 The element does not require that any particular
24 person actually relied on, or actually suffered damages as a
25 consequence of, any fraudulent representation or concealment of

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1 facts. Nor need you find that Mr. Milton profited from the
2 fraud. It is enough that a false statement, or a statement
3 omitting material facts that made what was said deliberately
4 misleading, was made as part of a fraudulent scheme in the
5 expectation that it would be relied on. You must concentrate
6 on whether there was such a scheme, not on the consequences of
7 the scheme. Of course, proof concerning the accomplishment of
8 the goals of the scheme may be evidence of the existence of the
9 scheme itself.

10 In addition, the false or fraudulent representation
11 must relate to a material fact or matter. A material fact is
12 one that would reasonably be expected to be of concern to a
13 reasonable and prudent person in making a decision. That means
14 that, if you find a particular statement or representation
15 false you must determine whether that statement or
16 representation was one that a reasonable person would have
17 considered important in making his or her decision. The same
18 principle applies to fraudulent half-truths or omissions, that
19 is, failures to disclose facts in a manner that makes what was
20 said or represented misleading or deceptive. On this point, I
21 also note that contractual disclaimers of reliance on prior
22 misrepresentations do not render those misrepresentations
23 immaterial as a matter of law under the criminal wire fraud
24 statute.

25 A scheme to defraud need not be shown by direct

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1 evidence, but may be established by all the circumstances and
2 facts in the case.

3 If you find beyond a reasonable doubt that a scheme to
4 defraud did exist, you next should consider the second element
5 of wire fraud.

6 The second element the government must prove beyond a
7 reasonable doubt under Counts Three and Four is that Mr. Milton
8 devised the scheme to defraud knowingly, willfully, and with
9 specific intent to defraud.

10 The words "devised" and "participated" are words that
11 you are familiar with and, therefore, I do not need to spend
12 much time defining them for you. To "devise" a scheme to
13 defraud is to concoct or plan it. To "participate" in a scheme
14 to defraud means to associate oneself with it with a view and
15 intent to toward making it succeed.

16 In order to satisfy this element, it is not necessary
17 for the government to establish that Mr. Milton originated the
18 scheme to defraud. It is sufficient if you find that a scheme
19 to defraud existed, even if originated by another, and that
20 Mr. Milton, while aware of the scheme's existence, knowingly
21 participated in it.

22 It is also not required that Mr. Milton participated
23 in or had knowledge of all of the operations of the scheme.
24 The guilt of a particular defendant is not governed by the
25 extent of his or her participation.

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1 As I have previously noted, before the defendant may
2 be convicted of the fraud charged here, he must also be shown
3 to have acted knowingly and willfully and with a specific
4 intent to defraud.

5 To act "knowingly" means to act voluntarily and
6 deliberately, and not because of ignorance, mistake, accident,
7 or carelessness.

8 To act "willfully" means to act voluntarily and with a
9 wrongful purpose.

10 Mr. Milton acted with specific intent to defraud if he
11 engaged or participated in the fraudulent scheme with some
12 realization of its fraudulent or deceptive character and with
13 an intention to be involved in the scheme to defraud and to
14 help it succeed with a purpose of causing harm to the victim.
15 The government need not prove that the intended victim or
16 victims was or were actually harmed; only that such harm was
17 contemplated. Actors are presumed to intend the natural and
18 probable consequences of their actions. So, when the necessary
19 result of the actor's scheme is to injure others, fraudulent
20 intent may be inferred from the scheme itself. In addition,
21 the government need not prove that the intent to defraud was
22 the only intent of Mr. Milton. A defendant may have the
23 required intent to defraud even if the defendant was motivated
24 by other lawful purposes as well.

25 The question of whether a person acted knowingly,

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1 willfully, and with specific intent to defraud is a question of
2 fact for you to determine, like any other fact question. This
3 question involves one's state of mind. Direct proof of
4 knowledge and fraudulent intent is almost never available. It
5 would be a rare case where it could be shown that a person
6 wrote or stated that, as of a given time in the past, he or she
7 committed an act with fraudulent intent. Such proof is not
8 required.

9 The ultimate facts of knowledge and criminal intent
10 are subjective. Such knowledge and intent may be established
11 by circumstantial evidence, based upon a person's outward
12 manifestations, words, conduct, acts, and all the surrounding
13 circumstances disclosed by the evidence and the rational or
14 logical inferences that may be drawn therefrom. Circumstantial
15 evidence, if believed, is of no less value than direct
16 evidence.

17 What is referred to as drawing inferences from
18 circumstantial evidence is no different from what people
19 normally mean when they say, "use your common sense." Using
20 your common sense means that, when you come to decide whether
21 the defendant possessed or lacked an intent to defraud, you
22 need not limit yourself to just what the defendant said, but
23 you may also look at what the defendant did and what others did
24 in relation to the defendant and, in general, everything that
25 occurred.

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1 As a practical matter, then, in order to sustain the
2 charges against Mr. Milton, the government must establish
3 beyond a reasonable doubt that he knew that his conduct was
4 calculated to deceive and, nonetheless, he associated himself
5 with the alleged fraudulent conduct for the purpose of causing
6 some loss to another.

7 The third and final element that the government must
8 establish beyond a reasonable doubt to sustain its burden under
9 Counts Three and Four, the wire fraud charges, is that
10 interstate wires, for example, phone calls, e-mail
11 communications, text messages, bank wire transfers, or online
12 document filings were used in furtherance of the scheme to
13 defraud.

14 The parties agree that this element has been met.

15 (Continued own next page)

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1 THE COURT: Good faith on the part of Mr. Milton is a
2 complete defense to each and every one of the charges in this
3 case. If Mr. Milton, in good faith, believed in good faith
4 that he was acting properly even if he was mistaken in that
5 belief, and even if others were injured by his conduct, he
6 cannot be found guilty. An honest mistake, or even
7 carelessness, does not rise to the level of criminal conduct.
8 By way of example, if Mr. Milton honestly believed that his
9 statements to investors were accurate and not misleading, that
10 would be a complete defense to the securities fraud charges
11 even if that belief ultimately proved to be inaccurate. Let me
12 remind you that Mr. Milton has no burden to prove his good
13 faith. Rather, the government must prove a bad faith and
14 intent to defraud beyond a reasonable doubt. If the evidence
15 in this case leaves you with a reasonable doubt as to whether
16 Mr. Milton acted in bad faith or with an intent to defraud,
17 then you must find him not guilty.

18 In considering whether or not a defendant acted in
19 good faith, however, you are instructed that a belief by the
20 defendant, if such belief existed, that ultimately everything
21 would work out so that no investors would lose any money, does
22 not necessarily constitute good faith. No amount of honest
23 belief on the part of a defendant that the scheme will
24 ultimately make a profit for the investors will excuse
25 fraudulent actions or false representations by him.

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1 With respect to any given count that you are
2 considering, the government, in addition to proving the
3 essential elements of that charge, must also prove that at
4 least one act in furtherance of the charge occurred in the
5 Southern District of New York. This requirement is called
6 venue. The Southern District of New York is the judicial
7 district that includes Manhattan and the Bronx, and
8 Westchester, which includes Mamaroneck, New York, and Orange
9 Counties, as well as several other countries not relevant to
10 this case.

11 The government does not have to prove that a completed
12 crime was committed within the Southern District of New York,
13 or that Mr. Milton was ever in the Southern District of New
14 York. With respect to Counts One and Two, it is sufficient to
15 satisfy the venue requirement if any act in furtherance of the
16 crime charged occurred in this district. The act itself need
17 not be a criminal act. It could include, for example,
18 executing a securities trade within this district, or the
19 transmission of a communication or a wire in furtherance of the
20 scheme into or out of the district. With respect to Counts
21 Three and Four, it is sufficient to satisfy the venue
22 requirement if the defendant caused any interstate wire such as
23 an e-mail, phone call, or television or Internet broadcast to
24 be transmitted into or out of the district. The wire need not
25 itself be criminal, as long as it was transmitted or caused to

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1 be transmitted as part of the scheme. And the act need not
2 have been taken by Mr. Milton so long as the act was part of
3 the crime that you find he committed.

4 Unlike the elements of the offenses which must be
5 proven beyond a reasonable doubt, the government is only
6 required to prove venue by a preponderance of the evidence. A
7 preponderance of the evidence means that it is more probable
8 than not that some act in furtherance of the crime you are
9 considering occurred in this district.

10 Thus, with respect to each of the four counts, the
11 government has satisfied its venue obligations if you conclude
12 that it is more likely than not that any act in furtherance of
13 the crime charged occurred within this district, even if other
14 acts in furtherance of the crime charged occurred outside of
15 this district. If you find that the government has failed to
16 prove this venue requirement, then you must acquit Mr. Milton
17 of this charge.

18 The indictment refers to various dates. The
19 government does not need to prove than act occurred during a
20 specific time period or on a specific date. I instruct you
21 that it does not matter if a specific event is alleged to have
22 occurred on or about a certain date or month but the testimony
23 indicates that in fact it was a different date or month. The
24 law requires only a substantial similarity between the dates
25 alleged in the indictment and the dates established by the

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1 evidence.

2 You may not draw any inference, favorable or
3 unfavorable, towards the government or Mr. Milton from the fact
4 that any person other than Mr. Milton is not on trial here.
5 You also may not speculate as to the reasons why other persons
6 are not on trial. Those matters are wholly outside your
7 concern and have no bearing on your function as jurors.

8 A defendant in a criminal case never has any duty to
9 testify or come forward with any evidence. That is because, as
10 I have told you, the burden of proof beyond a reasonable doubt
11 remains on the government at all times and Mr. Milton is
12 presumed innocent. In this case Mr. Milton did not testify.
13 Under our Constitution, a defendant has no obligation to
14 testify or to present any evidence because it is the
15 government's burden to prove the defendant guilty beyond a
16 reasonable doubt. A defendant is never required to prove that
17 he is innocent.

18 You must not attach any significance to the fact that
19 Mr. Milton did not testify. You may not draw adverse
20 inferences against Mr. Milton because he did not take the
21 witness stand. You may not consider the decision not to
22 testify in any way in your deliberations in the jury room.
23 There are many reasons why an innocent person may choose not to
24 testify.

25 I will now tell you about one of Mr. Milton's theories

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1 of defense. It is important to keep in mind that by explaining
2 his defense, the burden remains on the government to prove each
3 charge beyond a reasonable doubt. With respect to Counts Two
4 and Three, Mr. Milton contends that he did not intend to harm
5 the alleged victims by depriving them of money or property.
6 Therefore, he contends, he believed that people who purchased
7 Nikola stock during the relevant period were not defrauded.
8 Similarly, with respect to Count Four, Mr. Milton contends that
9 he did not intend to harm Peter Hicks by depriving him of money
10 or property.

11 Now for the evaluation of evidence.

12 You are to consider only the evidence in the case.
13 The evidence in this case is the sworn testimony of the
14 witnesses, the exhibits received in evidence, and the
15 stipulations to which the parties have agreed. Anything you
16 may have seen or heard about this case outside the courtroom is
17 not evidence and must be entirely disregarded.

18 Exhibits which may have been marked for identification
19 but not received into evidence may not be considered by you as
20 evidence. Only those exhibits received into evidence may be
21 considered as evidence. It is for you alone to decide the
22 weight, if any, to give to the testimony and stipulations you
23 have heard and the exhibits you have seen. Testimony that I
24 have excluded or stricken is not evidence and may not be
25 considered by you in rendering your verdict.

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1 You are to consider as evidence -- you are not to
2 consider as evidence questions asked by the lawyers. It is the
3 witness' answers that are evidence, not the questions.
4 Arguments or objections by the attorneys are not evidence
5 because the attorneys are not witnesses. What they have said
6 to you in their opening statements and their summations is
7 intended to help you understand the evidence to reach your
8 verdict. If, however, your recollection of the evidence
9 differs from the statements made by the attorneys in their
10 opening statements or summations, go with your recollection of
11 the evidence.

12 Finally, any statements or rulings that I may have
13 made do not constitute evidence. Because you are the sole and
14 exclusive judges of the facts, I do not need to indicate any
15 opinion as to what the facts are or what the verdict should be.
16 The rulings I have made during the trial are not any indication
17 of my views. Also, you should not draw any inference from the
18 fact that I may have, on occasion, asked certain questions of
19 witnesses. Those questions were intended only to clarify or
20 expedite and are not an indication of my views of the evidence.
21 In short, if anything I have said or done seemed to you to
22 indicate an opinion on any matter you need to consider, you
23 must disregard it.

24 Now, there are two types of evidence that you may
25 properly use in reaching your verdict. One type of evidence is

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1 called direct evidence. One kind of direct evidence is a
2 witness' testimony about something they know by virtue of their
3 own senses -- something the witness has seen, felt, touched, or
4 heard. Direct evidence may also be in the form of an exhibit.
5 The other type of evidence is circumstantial evidence.
6 Circumstantial evidence is evidence that tends to prove one
7 fact indirectly by proof of other facts. Here is a simple
8 example of circumstantial evidence:

9 Assume that when you came into the court house this
10 morning the sun was shining and it was a nice day. Assume that
11 the courtroom blinds are drawn and that you cannot look
12 outside. As you are sitting here, someone walks in with an
13 umbrella that is dripping wet. Someone else -- somebody else
14 then walks in with a raincoat that is also dripping wet. Now,
15 you cannot look outside the courtroom and you cannot see
16 whether or not it is raining so you have no direct evidence of
17 that fact, but on the combination of the facts that I have
18 asked you to assume, it would be reasonable and logical for you
19 to conclude that between the time you arrived at the court
20 house and the time that these people walked in it had started
21 to rain.

22 That is all there is to circumstantial evidence. You
23 infer, on the basis of reason and experience and common sense
24 from an established fact, the existence or the non-existence of
25 some other fact.

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1 Many facts, such as a person's state of mind, can only
2 rarely be proved by direct evidence. Circumstantial evidence
3 is of no less value than direct evidence. You are to consider
4 both types of evidence. The law makes no distinction between
5 the two, but simply requires that before convicting a defendant
6 you, the jury, must be satisfied of the defendant's guilt
7 beyond a reasonable doubt from all of the evidence in the case.

8 It is the duty of the attorney for each side of the
9 case to object when the other side offers testimony or other
10 evidence that the attorney believes is not admissible. Counsel
11 also have the right and duty to ask the Court to make rulings
12 of law. All those questions of law must be decided by me. You
13 should not show any prejudice against an attorney or his client
14 because the attorney objected to the admissibility of evidence
15 or asked for a conference outside of the hearing of the jury,
16 or asked the Court for a ruling on the law.

17 As I have already indicated, my rulings on the
18 admissibility of evidence did not indicate any opinion about
19 the weight or effect of such evidence, or the lack of evidence.
20 You are the sole judges of the credibility of all witnesses and
21 the weight and effect of all evidence. If, however, I
22 sustained an objection to any evidence, or if I ordered
23 evidence to be stricken, that evidence must be entirely
24 ignored.

25 I have used the term "infer" and the lawyers in their

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1 arguments have asked you to draw inferences. When you draw an
2 inference you conclude from one or more established fact that
3 another fact exists and you do so on the basis of your reason,
4 experience, and common sense. The process of drawing
5 inferences from facts in evidence is not a matter of guesswork,
6 suspicion, or speculation. An inference is a reasoned, logical
7 deduction or conclusion that you, the jury, may draw but are
8 not required to draw from the facts which have been established
9 either by direct or circumstantial evidence. In considering
10 inferences, you should use your common sense and draw from the
11 facts which you find to be proven whatever reasonable
12 inferences you find to be justified in light of your
13 experience.

14 You have heard evidence that Nikola had lawyers. A
15 lawyer's involvement with an individual or entity does not,
16 itself, constitute a defense to any charge in this case. The
17 defense has not claimed that the defendant's conduct was lawful
18 because he acted on the advice of a lawyer.

19 Now for the important subject of evaluating testimony.
20 How do you evaluate the credibility or believability of the
21 witnesses? The answer is that you use your plain, common
22 sense. There is no magic formula by which you can evaluate
23 testimony. You should use the same tests for truthfulness that
24 you would use in determining matters of importance in your
25 everyday lives. You should ask yourselves, did the witness

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1 impress you as honest, open, and candid? Or was the witness
2 evasive and edgy, as if hiding something? How did he or she
3 appear, that is, his or her bearing, behavior, manner and
4 appearance while testifying? How responsive was the witness to
5 the questions asked on direct examination and on
6 cross-examination? You should consider the opportunity the
7 witness had to see, hear, and know about the things about which
8 he or she testified, the accuracy of his or her memory, his or
9 her candor or lack of candor, his or her intelligence, the
10 reasonableness and probability of his or her testimony, its
11 consistency or lack of consistency with other credible
12 evidence, and its corroboration or lack of corroboration by
13 other credible evidence.

14 In short, in deciding credibility, you should size the
15 witness up in light of his or her demeanor, the explanations
16 given, his or her interest in the case, and all the other
17 evidence in the case. Always remember to use your common
18 sense, good judgment, and life experience.

19 Few people recall every detail of every event
20 precisely the same way. A witness may be inaccurate,
21 contradictory, or even untruthful in some respects and yet
22 entirely believable and truthful in other respects. It is for
23 you to determine whether such inconsistencies are significant
24 or inconsequential.

25 If you find that a witness intentionally -- if you

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1 find that a witness is intentionally telling a falsehood that
2 is always a matter of importance you should weigh carefully.
3 If you find that any witness has willfully testified falsely as
4 to any material fact, that is, as to an important matter, the
5 law permits you to disregard completely the entire testimony of
6 that witness upon the principle that one who testifies falsely
7 about one material fact is likely to testify falsely about
8 everything. However, the law does not require you to consider
9 such a witness as totally unbelievable. You may accept so much
10 of his or her testimony as you deem true and disregard what you
11 feel is false.

12 You are not required to accept testimony even if the
13 testimony is uncontradicted and the witness' testimony is not
14 challenged. You may decide because of the witness' bearing or
15 demeanor, or because of the inherent improbability of the
16 testimony, or for other reasons, that the testimony is not
17 worthy of belief. On the other hand, you may find, because of
18 a witness' bearing and demeanor and based upon your
19 consideration of all the other evidence in the case, that that
20 witness is truthful.

21 By the processes I have just described, you, as the
22 sole judges of the facts, decide which of the witnesses you
23 will believe, what portions of their testimony you accept, and
24 what weight you will give to it.

25 In deciding whether to believe a witness, you should

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1 also specifically note any evidence of bias, hostility, or
2 affection that the witness may have towards one of the parties.
3 Likewise, you should consider evidence of any other interest or
4 motive that the witness may have in cooperating or not
5 cooperating with a particular party. If you find any such
6 bias, hostility, affection, interest, or motive, you must then
7 consider whether or not it affected or colored the witness'
8 testimony.

9 You should also take into account any evidence that a
10 witness may benefit or suffer in some way from the outcome of
11 the case. Such interest in the outcome may create a motive to
12 testify falsely and may sway a witness to testify in a way that
13 advances his or her own interests. Therefore, if you find that
14 any witness whose testimony you were considering may have an
15 interest in the outcome of this trial, then you should bear
16 that factor in mind when evaluating the credibility of his or
17 her testimony and accept it with great care.

18 Keep in mind, though, that it does not automatically
19 follow that testimony given by an interested witness is to be
20 disbelieved. There are many people who, no matter what their
21 interest in the outcome of the case may be, would not testify
22 falsely. It is for you to decide, based on your own
23 perceptions and common sense, to what extent, if at all, the
24 witness' bias or interest has affected his or her testimony.
25 You are not required to disbelieve an interested witness. You

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1 may accept so much of his or her testimony as you deem reliable
2 and reject as much as you deem unworthy of acceptance.

3 There are people whose names you have heard during the
4 course of this trial that did not appear in court to testify.
5 I instruct you that each party had an equal opportunity or lack
6 of opportunity to call any of these witnesses. Therefore, you
7 should not draw any inferences or reach any conclusions as to
8 what they would have testified to had they been called. Their
9 absence should not affect your judgment in any way. You should
10 remember my instruction, however, that the law does not impose
11 on the defendant in a criminal case the burden or duty of
12 calling any witnesses or producing any evidence, and that the
13 burden always rests with the government to prove the
14 defendant's guilt beyond a reasonable doubt.

15 The fact that one party called more witnesses and
16 introduced more evidence than the other does not mean that you
17 should find the facts in favor of the side offering the most
18 witnesses. The burden of proof is always on the government.
19 Mr. Milton is not required to call any witnesses or offer any
20 evidence since he is presumed to be innocent.

21 In this case, I have permitted certain witnesses to
22 express their opinions about matters that are in issue. A
23 witness may be permitted to testify on an opinion about those
24 matters about which he or she has special knowledge, skill,
25 experience, and training. Such testimony is presented to you

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1 on the theory that someone who is experienced and knowledgeable
2 in the field can assist you in understanding the evidence or in
3 reaching an independent decision on the facts.

4 In weighing this opinion testimony, you may consider
5 the witness' qualifications, his or her opinions, the reasons
6 for testifying, as well as all of the other considerations that
7 ordinarily apply when you are deciding whether or not to
8 believe a witness' testimony. You may give the opinion
9 testimony whatever weight, if any, you find it deserves in
10 light of all of the evidence of the case. You should not,
11 however, accept opinion testimony merely because I allowed the
12 witness to testify concerning his or her opinion. Nor should
13 you substitute it for your own reason, judgment, and common
14 sense. The determination of the facts in this case rest solely
15 with you. As with the testimony of other witnesses, you may
16 decide to accept all, some, or none of the testimony of any
17 expert witness.

18 You have heard the testimony of Special Agent Penland,
19 a law enforcement witness who testified during this trial about
20 certain charts and documents. The fact that a witness is or
21 was employed by the government does not mean that her testimony
22 deserves more or less consideration or greater weight than that
23 of any other witness. At the same time, it is legitimate for
24 defense counsel to try to attack the credibility of a law
25 enforcement witness on the grounds that her testimony may be

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1 colored by a personal or professional interest in the outcome
2 of the case. It is your decision, after reviewing all the
3 evidence, whether to accept or reject the testimony of the
4 witness and to give that testimony whatever weight you find it
5 deserves.

6 You have heard evidence that prior to appearing in
7 court witnesses have discussed the facts of the case and their
8 testimony with attorneys. Although you may consider this fact
9 when you are evaluating a witness' credibility, I should tell
10 you that there is nothing improper or unusual about a witness
11 meeting with lawyers before testifying so that the witness can
12 be aware of the subjects he or she will be questioned about and
13 can focus on those subjects and have the opportunity to prepare
14 or review relevant exhibits before being questioned about them.
15 Such consultation helps conserve your time and the Court's
16 time. In fact, it would be unusual for a lawyer to call a
17 witness without such consultation.

18 The parties presented exhibits in the form of charts
19 and summaries. As you will recall, some of the charts and
20 summaries were not admitted in evidence but were shown to you
21 as aids to make other evidence more meaningful and to help you
22 in considering that evidence. Others were admitted into
23 evidence as exhibits. I admitted these charts and summaries in
24 place of or in addition to the underlying documents that they
25 represent in order to save time and avoid unnecessary

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1 inconvenience. They are no better than the testimony or the
2 documents upon which they are based. Therefore, you are to
3 give no greater consideration to these charts or summaries than
4 you would give to the evidence upon which they are based. It
5 is for you to decide whether they correctly present the
6 information contained in the testimony and in the exhibits upon
7 which they were based.

8 An audio recording has been admitted into evidence in
9 this case. This evidence was lawfully obtained by the
10 government and properly admitted in this case. Whether you
11 approve or disapprove of the government's use of the recording
12 of this conversation may not enter into your deliberations. I
13 instruct you that the government's use of this evidence is
14 entirely lawful.

15 You have heard, in the form of stipulations of fact --
16 you have heard evidence, rather, in the form of stipulations of
17 fact. A stipulation of fact is an agreement between the
18 parties that a certain fact is true. You must regard such
19 agreed upon facts as true.

20 You have heard testimony that the defendant made
21 statements in which he claimed that his conduct was consistent
22 with innocence and not with guilt. The government claims that
23 these statements in which the defendant attempted to exculpate
24 himself are false. If you find that the defendant gave a false
25 statement in order to divert suspicion from himself, you may

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1 infer that the defendant believed that he was guilty. You may
2 not, however, infer on the basis of this alone that the
3 defendant is, in fact, guilty of the crimes for which he is
4 charged.

5 Whether or not the evidence as to a defendant's
6 statements shows that the defendant believed that he was
7 guilty, and the significance, if any, to be attached to any
8 such evidence are matters for you, the jury, to decide.

9 Under your oath as jurors, you are to evaluate the
10 evidence calmly and objectively, without sympathy or prejudice.
11 You are to be completely fair and impartial. You are to be
12 guided solely by the evidence in this case and the crucial
13 bottom line question that you must ask yourselves as you sift
14 through the evidence is has the government proven the elements
15 of the crimes charged beyond a reasonable doubt.

16 It would be improper for you to consider, in deciding
17 the facts of the case, any personal feelings you may have about
18 the race, religion, national origin, sex, disability, or age of
19 any party or witness or any other such irrelevant factor. It
20 would be equally improper for you to allow any feelings you
21 might have about the nature of the crimes charged to interfere
22 with your decision-making process. All parties are entitled to
23 the same fair trial at your hands. They stand equal before the
24 law and are to be dealt with as equals in this court. If you
25 let fear or prejudice, or bias, or sympathy interfere with your

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1 thinking, then there is a risk that you will not arrive at a
2 true and just verdict.

3 If you have a reasonable doubt as to Mr. Milton's
4 guilt with respect to a particular count, you should not
5 hesitate to render a verdict of acquittal on that charge. But
6 on the other hand, if you should find that the government has
7 met its burden of proving Mr. Milton's guilt beyond a
8 reasonable doubt with respect to any particular count, you
9 should not hesitate because of sympathy or any other reason to
10 render a verdict of guilty on that count.

11 In determining whether the government has proven the
12 charges beyond a reasonable doubt, you should not consider the
13 question of possible punishment in the event that you are to
14 find Mr. Milton guilty as charged. The duty of imposing a
15 sentence rests exclusively upon the Court. Your function is to
16 weigh the evidence in the case and to determine whether or not
17 Mr. Milton is guilty beyond a reasonable doubt, solely upon the
18 basis of such evidence or lack of such evidence. Therefore, I
19 instruct you that you cannot allow the consideration of the
20 punishment which may be imposed upon Mr. Milton, if he is
21 convicted, to influence your verdict in any way or in any sense
22 enter into your deliberations.

23 Now, with respect to deliberations, you will now
24 retire to decide the case. It is your duty, as jurors, to
25 consult with one another and to deliberate with a view to

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1 reaching an agreement. Each of you must decide the case for
2 yourself but you should do so only after consideration of the
3 case with your fellow jurors. Your verdict, and the answers to
4 each question on the verdict form, must be unanimous. Discuss
5 and weigh your respective opinions dispassionately, without
6 sympathy, prejudice, or favor toward either party, and adopt
7 that conclusion which in your good conscience appears to be in
8 accordance with the truth.

9 As you deliberate, please listen to the opinions of
10 your fellow jurors and ask for an opportunity to express your
11 own views. Every juror should be heard. No one juror should
12 hold center stage in the jury room and no one juror should
13 control or monopolize the deliberations. You should all listen
14 to one another with courtesy and respect. If, after stating
15 your own view, and if after listening to your fellow jurors you
16 become convinced that your view is wrong, do not hesitate
17 because of stubbornness or pride to change your view. On the
18 other hand, do not surrender your honest convictions and
19 beliefs concerning the weight or effect of the evidence solely
20 because of the opinions of your fellow jurors, or because you
21 are outnumbered, or for the mere purpose of returning a
22 verdict. Your final vote must reflect your conscientious
23 belief as to how the issues should be decided and your verdict
24 must be unanimous.

25 You are not to discuss the case until all jurors are

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Charge

1 present. Nine, or 10, or even 11 jurors together is only a
2 gathering of individuals. Only when all jurors are present do
3 you constitute a jury and only then may you deliberate.

4 If any of you took notes during the course of the
5 trial, you should not show your notes or discuss your notes
6 with any other juror during your deliberations. Any notes that
7 you have taken are to be used solely to assist you and are not
8 a substitute for the transcript of the testimony which has been
9 taken down verbatim by the court reporters, or the exhibits
10 themselves. The fact that a particular juror has taken notes
11 entitles that juror's views to no greater weight than those of
12 any other juror. And please remember that if notes were taken
13 during the lawyers' arguments, the lawyers' arguments are not
14 evidence.

15 The exhibits will be sent to you in the jury room. If
16 you want any of the testimony read back, that can be arranged.
17 Please appreciate that it is not always easy to locate the
18 testimony that you might want, so be as specific as you
19 possibly can as to what witness and what portion of that
20 witness' testimony you would like to hear.

21 Any communication with the Court should be made in
22 writing, signed by your foreperson, and given to the court
23 security officer who will be outside the jury room door while
24 you deliberate. I will respond to any questions or requests
25 you have as promptly as possible either in writing or by having

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1 you return to the courtroom so I can speak with you in person.
2 In any event, do not tell me or anyone else how the jury stands
3 on any issue until after a unanimous verdict is reached so do
4 not ever indicate, in a note or otherwise, what the vote is or
5 which way the majority is leaning or anything like that.

6 Your first task when you retire to deliberate is to
7 select, by your own vote, one of you to sit as your foreperson.
8 The foreperson does not have any more power or authority than
9 any other juror and his or her vote or opinion does not count
10 for any more than any other juror's vote or opinion. The
11 foreperson is merely your spokesperson to the Court. He or she
12 will send out any notes. When you have reached a unanimous
13 verdict, you should send a note, signed by the foreperson, and
14 the note should say, "The jury has reached a unanimous
15 verdict." You should not indicate how you decided the case.
16 You will then return to open court with the foreperson who will
17 announce the verdict on behalf of the jury.

18 The foreperson will have a verdict form on which to
19 record your verdict. It is a list of questions that you must
20 resolve based on the evidence and the instructions I have given
21 you. When the foreperson has completed the form, he or she
22 must sign his or her name and the form will be marked as a
23 Court exhibit.

24 The most important part of this case, members of the
25 Jury, is the part that you, as jurors, are about to play as you

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1 deliberate on the issues of fact. It is for you, and you
2 alone, to decide whether the government has proven beyond a
3 reasonable doubt each of the essential elements of the crimes
4 with which Mr. Milton is charged. If the government has
5 succeeded on a particular count, your verdict should be guilty
6 as to that count. If it has failed, your verdict should be not
7 guilty. I know you will try the issues that have been
8 presented to you according to the oath that you have taken as
9 jurors. In that oath you promised that you would well and
10 truly try the issues in this case and render a true verdict
11 according to the law and evidence, impartially and fairly,
12 without prejudice or sympathy. Your function is to weigh the
13 evidence in the case and determine whether the government has
14 proved beyond a reasonable doubt Mr. Milton's guilt of the
15 crimes charged in the indictment.

16 As I previously stated, your verdict must be
17 unanimous. Again, if at any time you are not in agreement, you
18 are not to reveal the standing of the jurors, that is, the
19 split of the vote to anyone, including me, at any time during
20 your deliberations.

21 At this time the regular jurors will begin their
22 deliberations in the case. Nevertheless, the alternate jurors
23 are not quite excused. While the jury conducts its
24 deliberations, you do not have to be in court but you should
25 give Ms. Rivera your phone numbers where you can be reached

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1 because it is possible that one or more of you could be needed
2 to deliberate if a regular juror is unable to continue.

3 Ms. Rivera will call you if deliberations are
4 completed without our needing you so that you will know that
5 you are completely finished. Between now and then you must
6 continue to observe all the restrictions I have instructed you
7 on throughout the trial. That is, you must not discuss this
8 case with anyone, including your fellow alternate jurors, the
9 regular jurors, other people involved in this trial, members of
10 your family, friends, co-workers, or anyone else. You may not
11 communicate with anyone about the case on your cell phone,
12 through e-mail, text messaging, or by way of any other social
13 networking websites including Facebook and LinkedIn. Do not
14 speak at all with any of the parties, the witnesses, or the
15 attorneys. Do not permit anyone to discuss the case with you.
16 Do not friend or follow one another or any participant in this
17 trial on Facebook, Twitter, LinkedIn, or any other social
18 networking website. You may not remain in the presence of
19 anyone discussing the case. If anyone approaches you and tries
20 to talk to you about the case, please report that to me,
21 through Ms. Rivera, immediately.

22 Do not listen to or watch or read any news reports
23 concerning the trial if there were to be any. Do not any
24 research on the Internet or otherwise; and do not visit any
25 places mentioned during the trial or conduct any kind of

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1 investigation on your own including on social media. Should
2 you be asked to participate in reaching the verdict in this
3 case, the only information you will be allowed to consider in
4 deciding this case is what you learned in this courtroom during
5 the trial.

6 To the alternate jurors, I am sorry that you will
7 probably miss the experience of deliberating with the jury but
8 the law provides for a jury of 12 persons in this case. So,
9 before the rest of the jury retires into the jury room, if you
10 have any clothing or objects there, you will be asked to pick
11 them up and withdraw them before the deliberations start.

12 With that, I need to speak with the lawyers at side
13 bar for just a moment, ladies and gentlemen.

14 (Continued next page)
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Charge

1 (At side bar)

2 MR. CARUSO: Your Honor, under Rule 30(d) at this time
3 we renew all of our objections and requests with respect to the
4 jury charge which we previously made in writing and orally at
5 the charge conference. I assume the Court is going to adhere
6 to the charge as given, but I would make the motion or
7 application.

8 MR. PODOLSKY: We object and stand by our position
9 that we gave previously.

10 THE COURT: I will stand by the rulings that I have
11 made.

12 Let me ask the parties, did I misread or misstate
13 anything in the charge?

14 MR. CARUSO: No.

15 MR. PODOLSKY: No, your Honor.

16 MR. MUKASEY: You did not.

17 I would only ask that you remind them that there is no
18 5:00 Friday deadline and the Court is available Monday morning.

19 THE COURT: I will have several additional
20 instructions for them.

21 MR. MUKASEY: Thank you.

22 MR. CARUSO: And also now that I heard it, the
23 instruction about not investigating the case on your own or
24 Googling was addressed under the heading of alternate jurors,
25 so perhaps your Honor might just say what I just said about not

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1 looking at anything outside the evidence applies to everyone.

2 I just.

3 MR. BONDI: Including the alternates.

4 MR. CARUSO: It kind of hit me when I heard it. Thank
5 you.

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1 (In open court)

2 THE COURT: Ladies and gentlemen, just a couple of
3 other things before we let you go. First of all, as I believe
4 I told you yesterday, once you begin deliberating your schedule
5 is in your hands. You may continue to stay until 2:30, or if
6 you wish to stay later you can stay later. If your
7 deliberations continue into next week, if you want to come in
8 earlier than 9:30 you are free to come in earlier than 9:30 and
9 stay later than 2:30. It will be entirely in your hands so
10 that you let us know so that we can be available in the court
11 house during the time that you are here.

12 Obviously the instructions that I gave the alternate
13 jurors about not investigating or doing any Googling, etc.,
14 that applies with equal measure to the 12 other jurors.

15 We will be sending in the exhibits after you have gone
16 into the jury room. It will require you to download it from a
17 hard drive so that you can review it. I am fairly certain that
18 it should be easy for you folks. It might not be easy for me
19 but I am sure that you will be able to figure it out.

20 If at any point you do have a question for the Court,
21 I do give the lawyers an hour for lunch so if you send a note
22 out between 12:30 and 1:30, it may take us a little longer to
23 get back to you. But, if you send a note at some other time,
24 but please understand that any note that you send out I will
25 promptly gather the lawyers and get you an answer just as soon

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Charge

1 as we can. OK? Can we have the court security officer please
2 step forward?

3 (Marshal sworn)

4 THE COURT: Ladies and gentlemen, you may now discuss
5 the case.

6 (Whereupon, at 10:42 a.m. the jury retired to
7 deliberate)

8 THE COURT: You can be seated.

9 So, as I indicated yesterday, what I told the jury
10 about taking a little longer during the lunch hour is a lie and
11 so you should all be available, make sure that Ms. Rivera and
12 Ms. Londono Pardo have your cell phones so that we can call you
13 and you can be here in five minutes in the event we have any
14 note, period.

15 (Recess pending verdict)

16 (Continued next page)

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(Jury not present; 12:15 p.m.)

THE COURT: Good afternoon, everyone. We have received a note. I believe you have been provided copies.

I note that Mr. Milton is not here or Mr. Mukasey. Should we wait?

MR. CARUSO: Just wait for Mr. Mukasey. I don't know if we have summoned --

MS. YOUNG: I have. He is on his way.

MR. BONDI: Both are on their way, your Honor. I apologize. They should be here any second, if we could wait a little bit.

THE COURT: Obviously we will wait, but you should start thinking about -- I'm not quite sure whether there was one business model or several business models.

MS. ESTES: I think there was testimony about multiple ones, about multiple versions of the hydrogen business model.

THE COURT: About?

MR. BONDI: I was going to say, I think it is a reference to the April 6, 2020 analyst report, which the answer will be 2.47.

MS. ESTES: I think it doesn't say anything about a particular one, and there was testimony about one in June where the cost was 8.68, so . . .

THE COURT: Right. So we will wait for Mr. Milton to get here.

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1 (Pause)

2 MR. MUKASEY: Judge, we understand Mr. Milton will be
3 here within five, seven minutes. I also think we probably
4 could waive it, but if you let me reach out to him real
5 quick --

6 THE COURT: No, I will wait for Mr. Milton.

7 MR. MUKASEY: All right. Thanks.

8 THE COURT: But you might want to confer about how you
9 want to respond to this.

10 MR. MUKASEY: We will discuss it and then run it by
11 you guys.

12 (Pause)

13 THE COURT: Mr. Milton is here. Why don't we go on
14 the record.

15 Okay, folks, so we have received a note. It's been
16 marked Court Exhibit 1. The parties have a copy. It reads as
17 follows: "Cost to produce hydrogen in business model," and it
18 is signed by the foreperson, Juror No. 1, Elyse Stringer.

19 Do the parties have any suggestion as to how we might
20 answer this question?

21 MR. BONDI: Yes.

22 THE COURT: Okay.

23 MR. PODOLSKY: Judge, I think from our perspective
24 it's a little bit hard to know how to respond to this. It's
25 not actually a question. It just says, "Cost to produce

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1 hydrogen in business model." We could, I suppose, direct the
2 jury to the particular exhibits that refer, that contain
3 various business models as one option. I think before we
4 embark on some hunt, though, through thousands of pages of
5 transcripts, not really knowing what the jury is looking for --

6 THE COURT: They didn't ask for testimony.

7 MR. PODOLSKY: I agree with that, your Honor.

8 THE COURT: And just so the parties are aware of my
9 philosophy when it comes to answering juror questions, that I
10 answer the juror question and nothing more. So my
11 recommendation would be to direct them to particular exhibits
12 and to ask whether there is any other information that they
13 want concerning the exhibits or the issue.

14 MR. MUKASEY: That's fine, and we will start putting
15 together quickly a list of exhibits, we will compare it to the
16 government's suggestions.

17 THE COURT: Okay.

18 MR. PODOLSKY: That's fine.

19 MR. MUKASEY: Thanks.

20 (Pause)

21 MS. ESTES: Your Honor, we have conferred.
22 Unfortunately, I don't think we have an agreement on this one,
23 so I think we will have to take it up with your Honor.

24 THE COURT: Okay. First of all, what is the universe
25 of exhibits that we are talking about.

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1 MS. ESTES: So the government has two proposed
2 exhibits and I think one the parties do agree on, and that's
3 the analyst day presentation of Nikola, which has a model on
4 page 25 of the presentation.

5 So that is Government Exhibit 281.

6 THE COURT: Page 25?

7 MS. ESTES: Page 25.

8 Do you want to pull it up?

9 MR. MUKASEY: Judge, we actually, obviously, based our
10 whole defense on the model. So we think that putting in
11 everything that refers to the hydrogen model is important, and
12 we have identified --

13 THE COURT: Remember what I said not five minutes ago.
14 My philosophy when it comes to answering juror notes is to
15 answer the note. Your defense is of no particular concern of
16 mine right now.

17 MR. MUKASEY: Okay, but it says "cost to produce
18 hydrogen in business model." So we have tried to find those
19 exhibits that referred to the cost to produce hydrogen in
20 business model separate and apart from our defense. We are
21 trying to be as literal as possible.

22 MS. ESTES: And, your Honor, I think what we disagree
23 with is they have proposed exhibits that we don't think
24 actually refer to business model.

25 I will start with what -- I think this one we agree

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1 on, that this page refers to the business model.

2 THE COURT: Mine isn't on.

3 (Pause)

4 THE COURT: Okay. This is Government Exhibit 281.

5 MS. ESTES: This is 281.

6 THE COURT: Okay. And this is what?

7 MS. ESTES: This is page 25, and there it is Hydrogen
8 Station Unit Economics is the header of the page, and then it
9 lists out how they calculate the cost to produce hydrogen
10 there.

11 THE COURT: Okay.

12 MS. ESTES: And then the next one the government would
13 propose would be 250-A, which is this model that Dale Prows
14 testified about. He testified how they were revising the model
15 that summer. So this was a model where they list out the
16 regular model there in that second column, base station for
17 financial model, and then the hydrogen team redid the model and
18 came up with 8.68 there in the middle. And then on the right
19 is a model for Liquifaction, 4.24.

20 THE COURT: Okay.

21 MS. ESTES: There is a cover e-mail that goes along
22 with it that has the date. We could include that or not. That
23 would be Government Exhibit 250.

24 MR. MUKASEY: That's fine.

25 THE COURT: 250 and 250-A. So there is no

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1 disagreement as to those two, Mr. Mukasey?

2 MR. MUKASEY: Correct.

3 THE COURT: Now, what do you guys want to put in?

4 MS. YOUNG: So first, DX 1742 is the same analyst day
5 presentation that is in GX 281, but it was attached to the 8K
6 and filed with the SEC.

7 THE COURT: Can I see it? And this is Defense Exhibit
8 which number?

9 MS. YOUNG: 1742.

10 MS. ESTES: It is 1742. I mean it is duplicative of
11 281.

12 THE COURT: Okay.

13 MS. ESTES: And it adds that it is with an SEC filing,
14 so I don't know that that's necessary, but -- if you go to the
15 first page.

16 THE COURT: So it's 1742, page what?

17 MS. YOUNG: 25.

18 THE COURT: Okay. I will include this. Next.

19 MS. YOUNG: So the next one is DX 35 and 34 is the
20 cover e-mail. And at the bottom, there is a -- this is a
21 worksheet that's titled "Revenue Model Assumptions."

22 THE COURT: I don't see that.

23 MS. YOUNG: There it is, and row 38.

24 MS. ESTES: Your Honor, our issue with this one is
25 that we think it would be improper to direct the jury to any

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1 particular line in this. There are many tabs on this
2 spreadsheet. They were actually toggling -- they were modeling
3 it for different places. So, for instance, if you go over on
4 the tabs, there is a tab for a Phoenix station, there is a tab
5 for a Van Nuys station, and the costs differ in all of the
6 tabs. So I think it would be proper to either provide them
7 nothing here because it is confusing, there is many different
8 tabs, or at the very least provide them the whole thing but not
9 point them to a particular part of this model that the defense
10 thinks is helpful to them.

11 THE COURT: I will include this, as well. What about
12 the cover e-mail.

13 MS. ESTES: We are fine with the cover e-mail.

14 THE COURT: So Defense Exhibits 34 and 35.

15 Anything else?

16 MS. YOUNG: Yes, your Honor, DX 210, page 5 please.

17 MS. ESTES: Your Honor, this is not the business
18 model. There was testimony about this from Dale Prows. This
19 is where, in the summer of 2020, because they weren't getting
20 what they needed from NEL, their business partner, they went to
21 other potential companies that might partner with them on
22 electrolyzers and asked for RPs. So this is what various
23 different companies said they could possibly do for Nikola if
24 they built the electrolyzers. It also has various assumptions
25 built in from those different companies. It is certainly not

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1 Nikola's business model. This is provided by -- you can see
2 the companies at the top. Hytron, Cummins, plug Power, NEL,
3 Siemens, ThyssenKrupp. So these are models from six different
4 companies. This is not responsive to the note.

5 THE COURT: I am not including this exhibit.

6 Next?

7 MS. YOUNG: DX 1298.

8 MS. ESTES: Your Honor, this is a due diligence
9 document which is why we object to it. It's not a model. It's
10 from 2019, so well before the charged period here, and it is
11 not a model. It is a due diligence response to a potential
12 private investor.

13 MR. MUKASEY: It reflects the model.

14 MS. YOUNG: It reflects the model and was in place as
15 of April '19 which influenced his state of mind, obviously, but
16 it was the model of the company as of that date.

17 THE COURT: This is in evidence, right?

18 MS. YOUNG: Yes.

19 THE COURT: I will include 1298.

20 MS. ESTES: Your Honor, one thing on this, this is a
21 year before the statement here and the April 2020 model that we
22 have agreed to I think is what would more accurately reflect
23 what Nikola's actually doing in 2020. So I don't know that a
24 document from a year ahead of time, a due diligence response,
25 is actually going to be helpful to the jury or probative of

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1 what Mr. Milton was thinking in 2020 when he is making
2 statements about the cost to produce hydrogen. And this in
3 particular is also on electricity cost. It's not on hydrogen
4 more generally. It is specific to electricity.

5 THE COURT: I don't understand the distinction.

6 MS. ESTES: Well, the hydrogen --

7 THE COURT: I understand the distinction between
8 electricity and hydrogen, but isn't this part of their hydrogen
9 model?

10 MS. ESTES: Electricity cost was one assumption in the
11 hydrogen model. So this is an explanation in 2019—a year
12 before Mr. Milton's statements—about what they are thinking as
13 far as electricity cost, a single assumption in the model that
14 they use. So it is not the model. These are electricity cost
15 assumptions and what they are saying about this. And if you go
16 down and look through it, they are talking about how they plan
17 to get electricity. Like these are things the jury has not
18 asked for. They are not asking for electricity cost rates or
19 who they are talking to for electricity, and they can certainly
20 ask for that if they want it. This is -- you can see right
21 here there is a PPA pricing index about wind prices.

22 THE COURT: I will include it. The jury can determine
23 whether or not it is useful to them.

24 MS. YOUNG: The next one is DX 1601, page 5.

25 MS. ESTES: Your Honor, this is the same thing. These

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1 are due diligence responses. Can we go to the first page of
2 it? I think this may be from even earlier.

3 MS. YOUNG: It is VectoIQ.

4 MR. MUKASEY: Yeah, it is VectoIQ, and it specifically
5 says it is the model.

6 THE COURT: I'll include it.

7 MS. YOUNG: The next one is DX 1604, page 5.

8 MS. ESTES: Your Honor, these are questions from 2018,
9 so now we are two years out from the charged conduct.

10 THE COURT: It's in evidence, but why should I not
11 include it? Besides the --

12 MS. ESTES: Again, we just don't think this is
13 responsive. This is all about electricity costs, not the
14 hydrogen cost model.

15 THE COURT: Is this just about electricity costs?

16 MS. YOUNG: Could you please scroll up a little bit
17 higher on the page?

18 Yes, the language under the graph regarding Nikola's
19 model assumes average energy prices.

20 MS. ESTES: This is the same thing. These are
21 assumptions about electricity prices from their research on
22 electricity prices across the country.

23 MS. YOUNG: And I believe there is testimony that
24 electricity is the largest input into the hydrogen model.

25 THE COURT: This will be included.

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1 MS. YOUNG: And the last one is DX 1610, page 13.
2 There it is "Nikola's model assumes."

3 THE COURT: Okay. This one will be included as well.

4 MS. YOUNG: Thank you.

5 THE COURT: That's it?

6 MR. MUKASEY: That's all from us.

7 THE COURT: So this is what I propose to send to the
8 jury. We don't have to bring them out. I propose to send them
9 a handwritten note from me: "In response to your note, which
10 has been marked as Court Exhibit 1, the jury is referred to the
11 following exhibits," and then I will put, "Government Exhibit
12 281, page 25; Government Exhibits 250 and 250-A; Defense
13 Exhibit 1742, page 25; Defense Exhibits 34 and 35; Defense
14 Exhibits 1298, 1601, 1604, and 1610, page 13." I will also
15 include, "If you have any additional questions on this topic
16 please let us know."

17 Any objection to that language.

18 MR. MUKASEY: No objection.

19 (Pause).

20 THE COURT: Okay. So I propose that we make a copy of
21 this for you folks, and then we can give the original to the
22 jury. It reads, "In response to your note, which has been
23 marked as Court Exhibit No. 1, the jury is referred to the
24 following exhibits: GX 250 and 250-A; GX 281, page 5; DX 34
25 and 35; DX 1742, page 25; DX 1298; DX 1601; DX 1604; DX 1610

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1 page 13. Please let us know if you have any additional
2 questions on this or any other topic," signed by myself.

3 So we will send this back to the jury. We will have
4 copies made for you, and we will wait to hear from them.

5 MS. YOUNG: Your Honor, one question. Is page 5
6 indicated for DX 1601 and 1604?

7 THE COURT: It is not, but I can include that, page 5,
8 page 5.

9 MS. YOUNG: And DX 1742?

10 THE COURT: Page 25.

11 MS. YOUNG: Perfect. Thank you.

12 THE COURT: Okay.

13 (Recess pending verdict)

14 (Jury not present; 1:45 p.m.)

15 THE COURT: Everyone is here so should we put this on
16 the record?

17 COUNSEL: Yes.

18 THE COURT: All right, folks. We have a second note
19 that's been marked Court Exhibit No. 2, and it reads in its
20 entirety as follows: "Can we please have the testimony for
21 Peter Hicks."

22 They have asked for the entirety of the testimony. My
23 understanding is that the government is preparing a transcript
24 of the entirety of that testimony which redacts any objections
25 that have been sustained, that redacts sidebars, and any other

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1 testimony that's been stricken.

2 To my mind, this is a purely mechanical process and
3 should not be controversial in any way. So, Mr. Roos and
4 Mr. Mukasey, can I depend on you folks to agree to what can be
5 sent back to the jury? And by the way, what I traditionally or
6 more recently have done is simply to provide the jury with
7 three or four copies of the transcript so that they can have it
8 in the jury room and do what they will with it.

9 Any objection to that?

10 MR. MUKASEY: No. And you can count on us to agree on
11 what goes back.

12 MR. ROOS: No problem.

13 THE COURT: Okay. In that event, how long do you
14 think that will take? Especially the three or four copies.

15 MR. ROOS: I think the printing shouldn't be that
16 hard. This witness I think maybe spanned -- was it just a day?

17 (Counsel confer)

18 MR. ROOS: It's 149 pages, so I think we can probably
19 recreate four copies of that pretty quickly.

20 THE COURT: Okay. Wonderful. I think we have gotten
21 you copies of the note itself, so when you have the copies
22 ready, just let Ms. Rivera know and she can provide them to the
23 jury. Okay?

24 MR. ROOS: Yes, your Honor.

25 MR. MUKASEY: Yes.

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1 THE COURT: Okay. Thank you, folks. See you later.

2 And by the way, we will try to get from the jury,
3 maybe when we give them these copies, whether they intend to go
4 past 2:30 today.

5 MR. ROOS: Thank you, your Honor.

6 MR. MUKASEY: Thank you.

7 (Recess pending verdict)

8 (Jury not present; 3:53 p.m.)

9 THE COURT: Okay, folks. We are on the record. We
10 have received another note. It is marked as Court Exhibit 3
11 and it reads in its entirety as follows: "The jury has reached
12 a unanimous verdict."

13 I understand from the defense that they wish me to
14 poll the jury. Accordingly, the jury will be polled.

15 Is there anything else that anyone wished to put on
16 the record at this time?

17 MR. PODOLSKY: No, your Honor.

18 MR. MUKASEY: No, Judge.

19 (Pause)

20 (Jury present; 4:15 p.m.)

21 THE COURT: Everyone please be seated.

22 Ladies and gentlemen of the jury, we have received a
23 note which has been marked Court Exhibit 3, and it reads as
24 follows: "The jury has reached a unanimous verdict." It is
25 signed by your foreperson, Juror No. 1.

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1 Juror No. 1, do you have a verdict?

2 THE FOREPERSON: Yes, we do.

3 THE COURT: Ms. Rivera.

4 (Pause)

5 THE COURT: Ms. Rivera, please take the verdict.

6 THE DEPUTY CLERK: As to Count One, Securities Fraud
7 under Title 15, how do you find?

8 THE FOREPERSON: Guilty.

9 THE DEPUTY CLERK: As to Count Two, Securities Fraud
10 under Title 18, how do you find?

11 THE FOREPERSON: Not guilty.

12 THE DEPUTY CLERK: As to Count Three, Wire Fraud under
13 Title 18, how do you find?

14 THE FOREPERSON: Guilty.

15 THE DEPUTY CLERK: And Count Four, Wire Fraud under
16 Title 18, how do you find?

17 THE FOREPERSON: Guilty.

18 THE COURT: You may be seated.

19 Ladies and gentlemen, I'm going to ask a question of
20 each of you and you should answer yes or no.

21 Juror No. 1, is this your verdict?

22 JUROR: Yes, it is.

23 THE COURT: Juror No. 2, is this your verdict?

24 JUROR: Yes.

25 THE COURT: Juror No. 3, is this your verdict?

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1 JUROR: Yes.

2 THE COURT: Juror No. 4, is this your verdict?

3 JUROR: Yes.

4 THE COURT: Juror No. 5, is this your verdict?

5 JUROR: Yes.

6 THE COURT: Juror No. 6, is this your verdict?

7 JUROR: Yes.

8 THE COURT: Juror No. 7, is this your verdict?

9 JUROR: Yes.

10 THE COURT: Juror No. 8, is this your verdict?

11 JUROR: Yes.

12 THE COURT: Juror No. 9, is this your verdict?

13 JUROR: Yes.

14 THE COURT: Juror No. 10, is this your verdict?

15 JUROR: Yes.

16 THE COURT: Juror No. 11, is this your verdict?

17 JUROR: Yes.

18 THE COURT: Juror No. 12, is this your verdict?

19 JUROR: Yes.

20 THE COURT: And so say you all.

21 Ladies and gentlemen, your service as jurors is ended.

22 I want to thank each and every one of you for the time and

23 attention that you have paid to this case. It is obvious that

24 you have been very attentive throughout. I want you to know as

25 well that our criminal justice system is the envy of the world

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1 and it is because of you, it is because when we have these
2 incredibly difficult decisions to make, we rely on the
3 collective wisdom of our neighbors. That's why we only ask
4 people that live in this district to come and serve as jurors.
5 And we rely on your collective wisdom to ensure that something
6 approaching justice is ultimately done.

7 So I want to thank you. At this point you can discuss
8 the case with whomever you want or you can decide not to
9 discuss the case. You may be approached as you are leaving by
10 members perhaps of the litigation teams or members of the
11 press. If you are approached and asked questions, you may
12 answer the questions if you wish or you may tell them that you
13 wish to go back to your normal life and they will be bound to
14 respect your wishes.

15 And if I could just ask, I know that some of you have
16 to leave, but if I could just ask you to stay a little bit
17 longer in the jury room so that I could come in and see you for
18 just a bit. Okay?

19 (Jury dismissed)

20 THE COURT: Everyone can be seated.

21 Mr. Mukasey, did you wish to make a motion at this
22 time or would you like to reserve?

23 MR. MUKASEY: I think we will reserve and submit
24 something in writing, Judge.

25 THE COURT: I'm sorry?

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1 MR. MUKASEY: We will reserve and submit something in
2 writing.

3 THE COURT: Okay. Anything from the government?

4 MR. ROOS: Two things, your Honor. One is we think it
5 is appropriate to reexamine the bail conditions. To be clear,
6 we are not asking for remand, but we do think that some
7 modification of the terms may be appropriate in light of the
8 conviction. And the second would just be to set a sentencing
9 date.

10 THE COURT: Okay. The sentencing date will be set
11 three months out.

12 Mr. Milton, you will be interviewed as part of that
13 process and it is certainly likely that any motion practice may
14 affect that schedule, but to the extent that we set a
15 sentencing date, you will be interviewed by the probation
16 department as part of that process. You can and should have
17 your lawyers with you during that interview. And it is
18 entirely possible that members of your family with whom you
19 live may also be interviewed by the probation department. And
20 I would ask that the defense lawyers coordinate with the
21 probation department so that process can take place as
22 efficiently as possible.

23 I am actually not aware of what the current conditions
24 are, Mr. Roos.

25 MR. ROOS: Yes, your Honor. So the current conditions

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1 are \$100 million personal recognizance bond that -- so that's
2 an unsecured bond with, then, a subset of which is security.
3 So it was secured by two financially responsible persons and
4 two properties—one in Morgan, Utah, one in Coalville, Utah.
5 And just looking back quickly at the initial presentment, I
6 think the estimated value of those two combined was around \$40
7 million, although I may be wrong.

8 Travel was restricted to several states, which has
9 been modified over time for a variety of reasons, all of which
10 I believe the government consented to. Surrender of travel
11 documents and pretrial supervision as directed.

12 So in terms of potential modifications, I think there
13 are a few areas to explore. The first is, and I will need
14 defense counsel's assistance on this, I think it is possible,
15 although I'm not positive, the Coalville property is the Peter
16 Hicks property. If it's not, then I am mistaken. I just want
17 to be sure that the property that's securing the bond is now
18 not property that's at least immediately subject to forfeiture
19 under Count Four. So that's item number one.

20 I think item number two, in light of the defendant's
21 access to personal aircrafts, there should be a restriction
22 related to that.

23 THE COURT: Restriction related to his use of aircraft
24 or travel restriction?

25 MR. ROOS: Well, I think there is a travel restriction

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1 in place, and I think some form of location monitoring which
2 was not a prior condition would now be appropriate in light of
3 both his ownership of properties outside of the United
4 States -- a property outside of the United States and access to
5 aircrafts.

6 THE COURT: Mr. Milton.

7 MR. MUKASEY: Judge, Mr. Milton has been a model
8 bailee. He has had absolutely no problems with travel, any
9 other bail condition. We are talking about a \$100 million
10 personal recognizance bond cosigned by two financially
11 responsible persons and property worth \$40 million. Sitting
12 right behind me are 15 people or 20 people who, you know,
13 monitor and live with and love Mr. Milton and make sure he is
14 here and make sure he is where he is supposed to be.

15 My understanding is Mr. Milton has had a wonderful
16 relationship with his Pretrial Services officer in Utah. I
17 would oppose this. Mr. Milton came here, stood trial, knew the
18 consequences, is going to go home and comply with every bit of
19 the bail that is already in place. He is not running to the
20 Turks and Caicos and using his airplanes for nefarious
21 purposes. One of the airplanes is a source of income to him
22 because it gets leased out.

23 So I would respectfully ask -- and I appreciate
24 Mr. Roos's concerns, but I would respectfully ask that we
25 continue the bail conditions because there has been absolutely

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1 no reason to modify them laid out. We are in exactly the same
2 position as we were an hour ago.

3 THE COURT: Well, I don't think that we are in exactly
4 the same position that we were an hour ago, but I agree with
5 the balance of your arguments, Mr. Mukasey. Mr. Milton
6 obviously has always appeared as required. He's been here
7 throughout the trial of course. It appears clear to me that he
8 has a strong basis of support and significant reasons not to
9 flee and it is a substantial bail package that is in place. So
10 I'm not going to add any additional conditions, Mr. Roos.

11 MR. ROOS: I guess one, if I could just try my luck a
12 little further, would be some sort of restriction on the
13 private aircraft usage. I know in other cases, for instance,
14 like a secondary custodian has been attached to the aircraft,
15 some other person who needs approval.

16 I totally appreciate it and I'm not disputing anything
17 Mr. Mukasey said. We obviously did not seek remand despite the
18 conviction for a reason. We totally agree that Mr. Milton has
19 been in compliance with his conditions. The reality is, given
20 his net worth, given what I think are about \$300 million in
21 stock sales, the access to private aircraft, and the overseas
22 property, we think some sort of adjustment is appropriate. I'm
23 not trying to make it unduly difficult for him, but I just
24 think some sort of adjustment is necessary.

25 THE COURT: I don't agree, so I'm not going to adjust

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1 the bail conditions at this time.

2 Mr. Mukasey, 30 days to file any papers?

3 MR. MUKASEY: Yes. We will submit Rule 29 and Rule 33
4 motions within 30 days.

5 THE COURT: Very well, and we will set a sentencing
6 date so that we have a control date for three months out.
7 Ms. Rivera.

8 THE DEPUTY CLERK: Yes. January 27, 2023, at 11 a.m.

9 THE COURT: And with that I think we are adjourned.

10 I want to thank the attorneys for their professional
11 courtesies, at least to me, throughout the entirety of this
12 trial. Thank you very, very much.

13 We are adjourned.

14 oOo